IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7377 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GARDEN SILK MILLS PVT.LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 7377 of 2001

MR MIHIR H JOSHI for Petitioners No. 1-3

MR VIPUL PANCHOLI for Respondent No. 1

MR ASIM J PANDYA for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/03/2002

ORAL JUDGEMENT

1. Heard ld. counsel appearing for the parties.

Rules. Ld. APP Mr. Vipul Pancholi waives service of Rule for Respondent No.1 State and Ld. Counsel Mr. Asim Pandya waives service of Rule for Respondent No.2. With the consent of the parties, the matter is taken up for final hearing today.

2. By way of this petition under Section 482 of CrPC, the petitioners seek to quash Criminal Case No. 4540 of 1989 filed against the petitioners by respondent no.2 for the offences under the relevant provisions of the Central Excise Act, 1944 and the Rules framed thereunder read with Section 114 of the Indian Penal Code on the ground that the very foundation of the complaint being the Order in Original passed by the Collector, Central Excise and Customs, Vadodara dated 15.5.1989 has been knocked out since the same has been quashed and set aside in appeal filed by the petitioners before the Customs Excise and Gold (Control) Appellate Tribunal. (CEGAT for short). Order, foundation of this petition, is at Annex."C". It would be proper to quote the operative part of the said order. It says;

> " .....It is a settled law that suspicion, however grave, cannot take the place of proof. If the department feels that a quantity of 1.87 lacs of L.Mtrs. still remains unaccounted for, proper investigation should have been done to find out whether corresponding quantity of grey fabrics have been illicitly received or whether the corresponding quantity, if not at least some quantity of finished goods, have gone out without payment of duty outside so as to support the conclusion. In the absence of any such details, we accept the explanation accounting for the difference over and above the percentage of 4% determined by the department by experiment. In this view of the matter also, the demand is not sustainable."

3. The submission of ld. Counsel Mr. Mihir Joshi is that the petitioners were not even aware that they can be served with the process of criminal Court when the departmental proceedings were terminated in favour of the petitioners up to the highest Tribunal of the department i.e. CEGAT. According to Mr. Joshi, the petitioner was served with a letter dated 11.9.2001 from the Court of ld. Chief Judicial Magistrate, Surat (Annex.B) and so petitioners have rushed to this Court by invoking jurisdiction if this Court under Section 482 of CrPC. During the course of submissions, ld. counsel Mr. Joshi has pointed out that the case of the present petitioners is covered by the ratio of the decision of the Apex Court

in the case of G.L.Gidwania & Another v/s Income-tax Officer & Another, reported in 1995 Supp.(2) SCC 724. He has also pointed out that even this Court, of course on other set of facts, in Misc.Criminal Application No. 7646/2000 dated 20.2.2002 has accepted the similar contentions which have been raised by the present petitioners. In response to the query raised by this Court, ld. counsel Mr. Pandya for Respondent No.2 has fairly accepted that the case of the present petitioner is covered by the Apex Court in the case of G.L.Gidwania (supra).

4. I have considered the averments made in the petition and the facts reflected in the decision of CEGAT (Annex.C Page -36) where the CEGAT has held that demand raised against the present petitioners is not sustainable and, therefore the Order-in-Original demanding duty was quashed and set aside. Not only that, the order imposing penalty has also been quashed and set aside by the CEGAT. Obviously therefore, the criminal proceedings initiated for the very same act, cannot be sustained in the eyes of law and, therefore, this petition requires to be allowed as prayed for.

5. For the reasons aforesaid, petition is allowed. Criminal Case No.4540 of 1989 and proceedings initiated therein pending in the court of ld. Chief Judicial Magistrate, Surat against the present petitioners are hereby quashed and set aside. Rule is made absolute.

Yadi to the concerned Court.

8..3.2002 [C.K. BUCH, J]
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